IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9601 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAPPIBEN ALIAS BHURIBEN DHIRUBEN VAGHARI

Versus

STATE OF GUAJRAT

Appearance:

MR IM PANDYA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. District Magistrate, Ahmedabad, passed an order on July 7, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner under the provisions of the PASA Act.

2. The detaining authority took into consideration seven offences registered against the petitioner-detenu under the Bombay Prohibition Act. The detaining authority also considered statements of six anonymous witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) were exercised by the detaining authority on basis of verification of the genuineness of the fear expressed by the witnesses qua the petitioner. The detaining authority took into consideration the possibility of resorting to less drastic remedies and came to conclusion that they cannot be resorted to and the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal activities.

3. The petitioner has challenged the order of detention by this petition under Article 226 of the Constitution on various counts. Mr. Pandya, learned advocate appearing for the petitioner has, however, restricted his arguments to non-application of mind while exercising powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the grounds of detention which indicate that, although the powers are exercised in respect of six anonymous witnesses and their identity has not been disclosed, the detaining authority itself or through other officer delegated with such power, has not verified the correctness or genuineness of the fear expressed by three of the witnesses and, therefore, the exercise of powers under Section 9(2) in respect of those witnesses is not proper. It has resulted into denial of right of the petitioner of making an effective representation. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition vehemently. He submitted that three of the statements have been verified by Sub-Divisional Magistrate under the authority of the District Magistrate and, therefore, it cannot be said that it is improper exercise of powers by the District Magistrate.

5. It is amply clear from the grounds of detention that the detaining authority was conscious about the fact that three of the witnesses were not available before the Sub-Divisional Magistrate, who verified the correctness and genuineness of the incidents stated by the witnesses and fear expressed by them. As such, that aspect has not

been verified at all either by the Sub-Divisional Magistrate or by the District Magistrate and exercise of powers under Section 9(2) qua these witnesses, therefore, would stand vitiated. This has affected the right of the detenu of making an effective representation and, therefore, the detention deserves to be quashed.

6. In view of the above discussion, this petition is allowed. The impugned order of detention passed against the detenu dated July 7, 1999 is hereby quashed. The detenu-Bhappiben alias Bhuriben Dhirubhai Vaghari is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A. L. DAVE, J.]

gt